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Supreme Court, U.S.
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NO. 04-5462

IN THE SUPREME COURT OF THE UNITED STATES

RONALD ROMPILLA,

Petitioner,

v.

Jeffrey A. Beard
~~MARTIN HORN~~, Commissioner, Pennsylvania Department of Corrections,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Dated: September 14, 2004

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Petitioner, Ronald Rompilla, files this reply brief in support of his Petition for Writ of Certiorari, and prays that the Court issue its writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit, which reversed the District Court's grant of habeas corpus relief in this capital case. The Circuit panel was divided 2-1 on both issues presented in Mr. Rompilla's Petition for Writ of Certiorari, and the en banc Circuit denied rehearing by a 6-5 vote.[1]

ARGUMENT

For the most part, Respondent's arguments do not require any response. Petitioner submits this short reply only to correct a factual misstatement made by Respondent regarding the supposed past "experience" of Petitioner's trial counsel and the significance of that supposed "experience" to their mitigation investigation. See Petition for Writ of Certiorari, Argument § II.

At trial and capital sentencing, Petitioner was represented by two public defenders, Maria Dantos and Fred Charles. The undisputed record is that:

> Ms. Dantos was primarily responsible for the penalty-phase; she was just 2½ years out of law school; this was her first homicide trial and first capital case.
>
> Mr. Charles was primarily responsible for the guilt-phase, but had the ultimate say on all tactical/strategic matters; he had represented a few "potentially" capital clients, but had never prepared for or conducted a capital sentencing proceeding.

A1060-67, A1257-58, A1284-85; Rompilla v. Horn, 355 F.3d 233, 276-77 (3d Cir. 2004) (Sloviter, J, dissenting). Thus, both lawyers were novices when it came to preparing for capital sentencing.

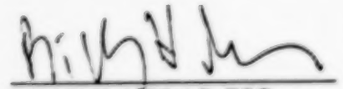
Respondent admits that Ms. Dantos lacked capital case experience, but claims that Mr. Charles had "experience handling capital cases and in preparing mitigation evidence." Brief in Opposition at 3. This is erroneous and contrary to the record which, as stated, shows that Mr. Charles had never prepared for or conducted a capital sentencing proceeding. Moreover, Respondent uses this erroneous assertion about Mr. Charles' supposed capital case "experience" to make the misleading claim that the mitigation investigation was a "plan" that was "formulated based on [that] past experience." Brief in Opposition at 11; see also id. at 4 (asserting that mitigation investigation was "[b]ased on" this supposed capital case "experience" and "practice").

Of course, even lawyers who do have significant capital case experience may be ineffective, as were counsel in Wiggins v. Smith, 123 S.Ct. 2527 (2003). See, e.g., Wiggins v. Smith, Respondent's Brief, 2003 WL 543903, *1 (U.S. Feb. 18, 2003) (Wiggins had a "trial team of two attorneys, one with eight years of trial experience in over 800 felony cases (including a previous capital case) and the other with four years of experience (including appellate work on death penalty cases)"). Petitioner's lawyers, however, had no capital case experience. They completely failed to investigate the aggravation, and they did not reasonably investigate mitigation.

CONCLUSION

This Court should issue its writ of certiorari and review the decision of the Third Circuit.

Respectfully submitted,



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Dated: September 14, 2004

[1] All emphasis herein is supplied unless otherwise indicated. Relevant parts of the state court record were included in an Appendix filed in the Third Circuit under that Circuit's rules, and are cited herein as "A" followed by the Third Circuit Appendix page number.

CERTIFICATE OF SERVICE

I, BILLY H. NOLAS, Esq., certify that on this 14th day of September, 2004, I have caused the foregoing Reply Brief to be served by FIRST CLASS MAIL on the following person:

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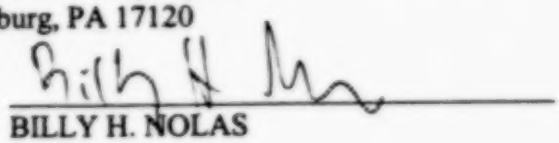

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